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11 BEFORE THE STATE OF WASHINGTON  
12 ENERGY FACILITY SITE EVALUATION COUNCIL  
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14 IN RE APPLICATION NO. 2002-01

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18 BP WEST COAST PRODUCTS, LLC.

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21 BP CHERRY POINT COGENERATION  
22 PROJECT  
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**BP - Whatcom County  
Stipulation and Settlement Agreement**

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27 **I. Introduction**  
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29 **A. Parties**  
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31 BP West Coast Products, L.L.C. ("BP") has filed an Application seeking a Site  
32 Certification Agreement ("SCA") from the Energy Facility Site Evaluation Council  
33 ("EFSEC" or "the Council") to construct and operate the proposed BP Cherry Point  
34 Cogeneration Project ("Project"). The Project is a 720 megawatt natural gas-fired,  
35 combined-cycle cogeneration facility. BP filed its application with EFSEC on June 3, 2002,  
36 and submitted a revised application on April 22, 2003.  
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1           Whatcom County ("the County") is a municipal subdivision of the State of  
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3 Washington, the boundaries of which are set forth in RCW 36.04.370. The County applied  
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5 for and was granted intervention in EFSEC's adjudicatory process concerning the Project.

6           EFSEC held adjudicatory hearings regarding BP's application in Bellingham,  
7  
8 Washington on December 8-11, 2003. The County participated in those hearings, presenting  
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10 testimony from witnesses and documentary evidence regarding various issues. Since the  
11  
12 conclusion of the hearings, the Parties have reached a negotiated resolution of the County's  
13  
14 concerns.  
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17 **B.     Purpose and Intent**

18           Through this Stipulation and Settlement Agreement ("Stipulation"), the County and  
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20 BP (collectively "the Parties") set forth the obligations, commitments, and restrictions that  
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22 the Parties intend to have incorporated into the SCA as conditions, should EFSEC  
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24 recommend that the Project be certified and the Governor approve the recommendation.  
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27 **C.     Resolution of Issues and Reservation of Rights.**

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29           1.     This Stipulation, together with the commitments contained in the Revised  
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31 Application for Site Certification and those made by BP during the course of the  
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33 adjudicative hearings, fully resolve all of Whatcom County's concerns regarding the  
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35 issuance of an SCA and related permits for the Cogeneration Project. No additional SCA  
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37 conditions are necessary to resolve the County's concerns. Accordingly, the County hereby  
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39 withdraws any portions of the testimony or evidence it has submitted previously that are  
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41 deemed to be inconsistent with the terms of this Stipulation.  
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43           2.     The County has also concluded that the Project, as conditioned by this  
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45 Stipulation, is consistent with all applicable local land use requirements. This Stipulation  
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47 constitutes a "certificate[]" from local authorities attesting to the fact that the proposal is

1 consistent and in compliance with county or regional land use plans or zoning ordinances,"  
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3 within the meaning of WAC 463-26-090. The County hereby withdraws any testimony,  
4  
5 evidence or argument previously submitted to the contrary.  
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7         3.         So long as the conditions set forth in this Stipulation are included in the SCA,  
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9 the County will not object to the issuance of an SCA for the Project. The County agrees not  
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11 to advocate any mitigation or permit restrictions that are inconsistent with or in addition to  
12  
13 those found in this Stipulation. So long as the SCA and related permits issued by EFSEC or  
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15 the Army Corps of Engineers (including but not limited to the PSD Permit, section 404  
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17 permit, NPDES permit and State Waste Discharge Permit) are not inconsistent with this  
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19 Stipulation, the County will not submit any further comments upon, object to the issuance  
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21 of, or otherwise appeal or challenge the SCA and related permits for the Project. However,  
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23 if the conditions of the SCA or related permits introduce an issue that could not reasonably  
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25 have been anticipated in light of the Revised Application for Site Certification, the related  
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27 draft permits, the DEIS and this Stipulation, the County reserves the right to comment on or  
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29 object to the same.  
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31         4.         This Stipulation shall not act to bar the County from pursuing enforcement  
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33 actions seeking compliance with SCA conditions or any regulatory requirements imposed.  
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## 35                     **II. Resolution of Issues**

### 36             **A.     Project Noise**

37             The Parties agree that the following conditions should be included in the SCA:  
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42             1.         The Certificate Holder shall operate the Project in compliance with  
43                     applicable Washington regulations governing noise from industrial facilities  
44                     found at Washington Administrative Code chapter 173-60.  
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2. In addition to applicable Washington regulations, the Project shall comply with the following noise limitations when the Project is operating normally under steady state conditions with all units operating at full load:
    - a. At Receptor #7 (as identified in Figure 3.9-1 of the Draft Environmental Impact Statement (DEIS)), project-only noise shall not exceed 47.7 dBA (regardless of wind direction).
    - b. At Receptor #9 (as identified in Figure 3.9-1 of the DEIS), project-only noise shall not exceed 45.8 dBA (regardless of wind direction), and shall not exceed 70 dBC (regardless of wind direction).
    - c. At Receptor #10 (as identified in Figure 3.9-1 of the DEIS), project-only noise shall not exceed 41.5 dBA (during calm winds and winds from all quadrants except SW) or 45.0 dBA (during wind from the SW quadrant), and shall not exceed 70 dBC (regardless of wind direction).
    - d. At the Cottonwood Beach Receptor, located at 4961 Morgan Road, project-only noise shall not exceed 36.4 dBA (during calm winds and winds from all quadrants except SW) or 43.6 dBA (during wind from the SW quadrant), and shall not exceed 70 dBC (regardless of wind direction).
    - e. At Receptor #13 (as identified in Figure 3.9-1 of the DEIS), project-only noise shall not exceed 54.4 dBA (regardless of wind direction).
  3. Within 180 days following the beginning of operation, the Certificate Holder shall conduct post-operation noise monitoring at the five receptor locations identified in subsection 2 above to determine compliance with the noise limitations included in this Stipulation, and report the results of the monitoring to EFSEC. Compliance will be verified by measurements taken when the Project is operating normally under steady state conditions with all units operating at full load. Compliance monitoring will be conducted in the manner outlined in D. Hessler, "Operational Noise Emissions Test Protocol" dated June 14, 2004, which is attached to this Stipulation.

1 **B. Heron Habitat**

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3 The Parties have agreed upon some clarifications, modifications and additions to the  
4 wetland mitigation plan in order to avoid adversely affecting Great Blue Heron habitat in the  
5 wetland mitigation areas. The agreed upon clarifications, modifications and additions are  
6 summarized in "Appendix F: BP Cherry Point Cogeneration Facility Wetland Mitigation  
7 Plan and the Birch Bay Great Blue Heron Colony," a copy of which is attached to this  
8 Stipulation. The Parties agree that the SCA should require wetland mitigation consistent  
9 with that described in the Final Wetland Mitigation Plan, including Appendix F.  
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17 **C. Site Restoration**

18 The Parties have agreed that the following conditions should be included in the SCA:  
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- 21 1. At least ninety (90) days prior to the beginning of site preparation, the  
22 Certificate Holder shall submit to the Council an initial site  
23 restoration plan.  
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- 25 2. The Certificate Holder shall submit a detailed site restoration plan to  
26 EFSEC for approval within twelve (12) months after the termination  
27 of the Project. The detailed site restoration plan will provide for the  
28 restoration of the Site within a reasonable time frame, taking into  
29 account the restoration plan and the anticipated future use of the site.  
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32 The County reserves the right to submit comments to EFSEC regarding both the Initial and  
33 Final Site Restoration Plans.  
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36 **III. General Provisions**

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38 1. Support of Stipulation. The Parties agree to cooperate in submitting this  
39 Stipulation promptly to EFSEC for acceptance, and shall support adoption of this Stipulation  
40 in proceedings before EFSEC, through testimony or briefing, as resolution of the issues  
41 included within this Stipulation. No Party to this Stipulation, or its agents, employees,  
42 consultants or attorneys will engage in any advocacy contrary to EFSEC's adoption of this  
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1 Stipulation as resolution of the issues included within this Stipulation. To the extent that  
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3 any testimony or exhibit filed by either Party conflicts with the terms of this Stipulation, the  
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5 Parties agree that the terms of this Stipulation shall supersede the recommendation in that  
6  
7 Party's testimony.

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9 2. Entire Stipulation. This Stipulation constitutes the Parties' entire agreement  
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11 on all matters set forth herein. The Parties acknowledge that this Stipulation is the product  
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13 of negotiation and compromise and shall not be construed against any Party on the basis that  
14  
15 it was the drafter of any or all portions of this Stipulation.

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17 3. Termination Rights. If EFSEC rejects or modifies this Stipulation or  
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19 attempts to impose additional mitigation conditions, the Parties reserve their individual and  
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21 collective rights to terminate this Stipulation. Before a party exercises its right to terminate  
22  
23 this Stipulation, both parties shall take reasonable actions necessary to keep the terms of this  
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25 Stipulation intact or to re-negotiate this Stipulation in a manner that is mutually satisfactory.  
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28 **WHATCOM COUNTY**

**BP WEST COAST PRODUCTS,  
L.L.C.**

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34 **Laurie Caskey-Schreiber**  
35 **Deputy Chair County Council**

36  
37 **Date:** 6/29, 2004

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39 **Mark Moore**  
40 **Cogeneration Project Manager**

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42 **Date:** \_\_\_\_\_, 2004

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46 **Pete Kremen**  
47 **Whatcom County Executive**

**Date:** 6-29, 2004

**BP – Whatcom County  
Stipulation & Settlement Agreement – 6**

[/Final Agreement - SL041000209]

**Perkins Coie LLP**  
1201 Third Avenue, Suite 4800  
Seattle, Washington 98101-3099  
Phone: (206) 359-8000  
Fax: (206) 359-9000